

NOTICE OF PROPOSED CHANGES IN REGULATIONS OF THE
CALIFORNIA DEPARTMENT OF SOCIAL SERVICES (CDSS)

ITEM # 1: Due Process Rights and Efficiencies for State Hearings

The CDSS hereby gives notice of the proposed regulatory action(s) described below. Any person interested may present statements or arguments orally or in writing relevant to the proposed regulations at a public hearing to be held on June 20, 2017, as follows:

Office Building # 8
744 P St. Room 103
Sacramento, California

The public hearing will convene at 10:00 a.m. and will remain open only as long as attendees are presenting testimony. The purpose of the hearing is to receive public testimony, not to engage in debate or discussion. The Department will adjourn the hearing immediately following the completion of testimony presentations. The above-referenced facility is accessible to persons with disabilities. If you are in need of a language interpreter at the hearing (including sign language), please notify the Department at least two weeks prior to the hearing.

Statements or arguments relating to the proposals may also be submitted in writing, e-mail or by facsimile to the address/number listed below. All comments must be received by 5:00 p.m. on June 20, 2017.

Following the public hearing CDSS may thereafter adopt the proposals substantially as described below or may modify the proposals if the modifications are sufficiently related to the original text. With the exception of nonsubstantive, technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption to all persons who testify or submit written comments during the public comment period, and all persons who request notification. Please address requests for regulations as modified to the agency representative identified below.

Copies of the express terms of the proposed regulations and the Initial Statement of Reasons are available from the office listed below. This notice, the Initial Statement of Reasons and the text of the proposed regulations are available on the internet at <http://www.dss.cahwnet.gov/ord>. Additionally, all the information which the Department considered as the basis for these proposed regulations (i.e., rulemaking file) is available for public reading/perusal at the address listed below.

Following the public hearing, copies of the Final Statement of Reasons will be available from the office listed below:

CONTACT: Office of Regulations Development
California Department of Social Services
744 P Street, MS 8-4-192
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CHAPTERS

Manual of Policies and Procedures (MPP), Chapter 22

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Division of State Hearings undertook an extended process of consultation with stakeholders, including claimants' advocates as well as county or departmental appeals representatives who take part in fair hearings conducted by the State Hearings Division. This has sometimes been called the "SB 320 Process" because the stakeholder group to discuss due process rights and efficiencies for state hearings began during discussion of legislation proposed during the 2011-2012 legislative session.

The proposed amendments relate to changes proposed by the stakeholder group, including those listed below.

The proposed amendments also update existing regulations for consistency with statutory amendments enacted since the last regulatory amendments in 2007.

Authorized Representatives

Existing law permits a claimant in a state hearing to authorize a representative in writing. The proposed amendments require the person to designate a lead representative if multiple persons or organizations are authorized. Existing law provides that a person who is incompetent to designate a representative may be represented under certain circumstances. The proposed amendments implement new legislation setting standards for allowing a representative of an incompetent person, as required by amendments adding Section 4014.5 to the Welfare & Institutions (W&I) Code. The proposed amendments also clarify the rights of a court-appointed conservator to represent the claimant at hearing and the consequences if an agency neglects to provide notices to the authorized representative as required by law.

Civil Rights Claims

Existing law requires the Division of State Hearings to refer civil rights claims to the CDSS' Civil Rights Bureau. The proposed amendments require civil rights claims related to the Department of Health Care Services (DHCS) to be referred to the Office of Civil Rights within that department. The proposed amendments also correct a reference to the regulations governing civil rights claims.

Clarification and Cross-Referencing

Without changing existing law, the proposed amendments clarify existing regulations and provide cross-references to related rules. Proposed clarifications include additions to the list of social services programs subject to hearing, limits to the 90-day look-back rule, application of regulations to the DHCS, definitions of "good cause" for delay, the right to a hearing based on agency inaction, the dismissal of moot issues and rehearings requested on the basis of new evidence.

Proposed cross-references relate provisions on adequate notice, authorized representatives, deceased claimants, time limits for requesting a hearing, non-compliance with subpoenas and child support services as aid pending the hearing.

Conditional Withdrawals of Requests for Hearing

Existing law allows a claimant to withdraw a hearing request conditionally, based on the agency's agreement to reconsider the disputed issue within 30 days. The proposed amendments provide for dismissing or reinstating the conditionally withdrawn hearing request and for the continuation of aid pending the hearing until the notice of redetermination is issued.

Determinations of Evidentiary Privilege

Existing law permits an Administrative Law Judge (ALJ) to exclude from a state hearing any evidence that is privileged from disclosure under the California Evidence Code. The proposed amendments require that any claim of privilege and any objections to the claim must be made on the record. The proposed amendments also clarify that evidence included in the record is available for review by any party and that evidence excluded from the record cannot be considered by the hearing ALJ.

Dismissals

Existing law permits dismissal of a claim when the identical issue has been the subject of a previous state hearing. The proposed amendments limit these dismissals to cases where the issue has been decided on the merits in the previous hearing involving the same claimant.

Electronic Records

The proposed amendments update state hearing procedures to allow for electronic filing of requests for hearing and to acknowledge the use of electronic benefit transfer cards.

Rehearings

Existing law allows a party to request a rehearing within 30 days after a decision is issued. The request must be in writing and must specify the reason for the request. The proposed amendments provide that, if the request is because new evidence, the new evidence must be provided with the request or the requesting party must explain why the evidence is not being provided.

Resources Family Approval Program

Existing law created the Resource Family Approval process for approving homes of persons seeking to provide foster care to a related child. The proposed amendments add Resource Family Approval decisions to the list of public social services subject to state hearings and update regulations regarding identities of claimants, and their right to notice and state hearing, to conform with the Resource Family Approval laws.

Subpoenas

Existing law allows an administrative law judge to issue subpoenas. The proposed amendments allow an administrative law judge to refer cases of non-compliance with subpoena to the department head for action under Government Code (GC) section 11187.

Statements of Position

Existing law requires the agency to prepare a statement of its position summarizing the facts of each case for hearing and stating the regulatory justification for the disputed action. The proposed amendments provide for cases where the agency is unable to discern the disputed issue.

Anticipated Benefits

These proposed regulations modernize CDSS procedures by providing for electronic communications, clarifies ambiguities in the previous regulations and responds to stakeholder requests for additional clarify and protections.

Evaluation of Inconsistency/Incompatibility

After conducting an evaluation for any other regulations in this area, CDSS has found that these are the only regulations concerning modernizing CDSS procedures by using electronic communications, clarify ambiguities and responding to stakeholder requests for additional clarity and protections. Therefore, the proposed regulations are neither inconsistent nor incompatible with existing state regulations.

COST ESTIMATE

1. Costs or Savings to State Agencies: None
2. Costs to Local Agencies or School Districts Which Must Be Reimbursed in Accordance With Government Code Sections 17500 - 17630: None
3. Nondiscretionary Costs or Savings to Local Agencies: None
4. Federal Funding to State Agencies: None

LOCAL MANDATE STATEMENT

These regulations do not impose a mandate upon local agencies or school districts. There are no "state-mandated local costs" in these regulations which require state reimbursement under Section 17500 et seq. of the GC because any costs associated with the implementation of these regulations are costs mandated by the federal government within the meaning of Section 17513 of the GC.

STATEMENT OF SIGNIFICANT ADVERSE ECONOMIC IMPACT ON BUSINESS

The CDSS has made an initial determination that the proposed action will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. This determination was made based on the fact that the regulations affect only the due process rights and obligations of public agencies and natural persons who apply for or receive public benefits. Businesses are not parties to the proceedings governed by the regulations that are being amended.

STATEMENT OF POTENTIAL COST IMPACT ON PRIVATE PERSONS OR BUSINESSES

The CDSS is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

SMALL BUSINESS IMPACT STATEMENT

The CDSS has determined that there is no impact on small businesses as a result of filing these regulations because these regulations are only applicable to state and county agencies.

STATEMENT OF RESULTS OF ECONOMIC IMPACT ASSESSMENT

The adoption of the proposed amendments will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California. The benefits of the regulatory action to the health and welfare of California residents, worker safety and the state's environment are as follows:

- Protecting due process rights of applicants and recipients in public social services, including CalWORKs, CalFresh, Medi-Cal and Covered California programs.
- Increase efficiency of state hearing procedures.
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STATEMENT OF EFFECT ON HOUSING COSTS

The proposed regulatory action will have no effect on housing costs.

STATEMENT OF ALTERNATIVES CONSIDERED

In developing the regulatory action, CDSS considered the following alternatives with the following results:

No action: Taking no action to codify the stakeholders' suggestions would not accomplish the purpose of protecting due process rights while increasing efficiency in state hearings.

The CDSS must determine that no reasonable alternative considered or that has otherwise been identified and brought to the attention of CDSS would be more effective in carrying out the purpose for which the regulations are proposed or would be as effective as and less burdensome to affected private persons than the proposed action or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

AUTHORITY AND REFERENCE CITATIONS

Sections 10553 and 10554 of the W&I Code grant CDSS the authority to develop the regulations and Sections 16519.5 through 16519.6 are being referenced to make the regulations for specific.

CDSS REPRESENTATIVE REGARDING THE RULEMAKING PROCESS OF THE PROPOSED REGULATION

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| Contact Person: | Oliver Chu | (916) 657-2586 |
| Backup: | Ying Sun | (916) 657-2586 |